

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
FEB 12 2004
CLERK OF COURT
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SOUTHERN DISTRICT

-----	x	
MARK E. FEINERSTEIN, Individually and On)	
Behalf of All Others Similarly Situated)	
)	
Plaintiff,)	Civil Action
)	No. 03-12474-UA ✓ <i>Attw</i> REC.
-against-)	
)	
MARSH & MCLENNAN COMPANIES, INC,)	
et al.,)	
)	
Defendants.)	
-----)	
MARIA DAGOSTINO-GANNON, Individually and)	
On Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	Civil Action
)	No. 03-12475-GAO
-against-)	
)	
PUTNAM INVESTMENTS TRUST, et al.,)	
)	
Defendants.)	
-----	x	

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RULING
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Putnam Investment Management, LLC, Putnam Investments Trust, Marsh & McLennan Companies, Inc., Putnam Investment Funds, and the various named Putnam mutual funds (collectively, the "Putnam Defendants") respectfully submit this reply memorandum in further support of their motion to stay proceedings in the above-captioned actions pending a ruling by the Judicial Panel on Multidistrict Litigation (the "MDL Panel" or the "Panel") on the

Putnam Defendants' petition to transfer a number of related cases to this District pursuant to 28 U.S.C. § 1407 for consolidated or coordinated pretrial proceedings.¹

ARGUMENT

I. THE ACTIONS SHOULD BE STAYED PENDING RESOLUTION OF THE MDL PETITION

A. Plaintiffs Have No Private Right of Action

The cornerstone of plaintiffs' Opposition is that their lawsuits purportedly are unique because they assert claims pursuant to Section 34(b) of the Investment Company Act of 1940 (the "ICA"). See Pls.' Opp. at 2, 6. Plaintiffs are wrong. Section 34(b) claims have been alleged in at least one other case pending against the Putnam Defendants: Dellavalle v. Putnam American Government Income Fund, et al., No. 03-CV-2192 (WWE) (D. Conn.). (A copy of the complaint is attached hereto as Exhibit A.) Moreover, the Dellavalle plaintiffs have agreed to stay all proceedings in that case pending the resolution of the Putnam Defendants' MDL petition. (A copy of the stipulation and order, which has been granted by the court, is attached hereto as Exhibit B.)

Even if plaintiffs' assertion were true, it does not support their opposition to a stay. The great weight of authority holds that there is no private right of action under Section 34 of the ICA. See, e.g., In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig., 2003 U.S. Dist. LEXIS 19177, at *21-22 (S.D.N.Y. Oct. 29, 2003); White v. Heartland High-Yield Mun. Bond Fund, 237 F. Supp. 2d 982, 987-88 (E.D. Wisc. 2002); Dorchester Investors v. Peak Int'l Ltd.,

¹ For the ease of the Court, the Putnam Defendants are responding as a group to plaintiffs' Motion, as captioned. In so doing, the Putnam Defendants do not concede that each of them has been served with the complaint in each of the actions included in plaintiffs' caption.

134 F. Supp. 2d 569, 581 (S.D.N.Y. 2001); Phillips v. Kapp, 87 F.R.D. 548 (S.D.N.Y. 1980).

While plaintiffs may be among the few who have asserted a facially invalid claim under Section 34, that is no reason to treat these cases differently from the many other related actions that are the subject of defendants' petition before the MDL Panel.

**B. Courts Routinely Grant Discovery Stays
Pending Resolution of Potentially Dispositive Motions**

There also is no merit to plaintiffs' argument that they somehow would be entitled to pursue discovery during the pendency of defendants' motion to dismiss plaintiffs' facially defective claims under the ICA. See Pls. Opp. at 2-3, 6. Even in non-PSLRA cases, courts retain the discretion to stay, and routinely do stay, all merits discovery pending the resolution of potentially dispositive motions. See, e.g., LTX Corp. v. Daewoo Corp., 979 F. Supp. 51, 54 (D. Mass. 1997), aff'd mem., 141 F.3d 1149 (1st Cir. 1998); Stanley v. CF-VH Assocs., 956 F. Supp. 55, 56 (D. Mass. 1997); Cash Energy, Inc. v. Weiner, 768 F. Supp. 892, 896 (D. Mass. 1991).

Furthermore, contrary to plaintiffs' suggestion, there are no other derivative actions against Putnam in which discovery is underway. See Pls.' Opp. at 6. On December 15, 2003, the parties in a number of the related Putnam actions pending in this District filed a stipulation and proposed order agreeing to stay all proceedings pending a ruling by the MDL Panel. See Exhibit C. And on February 9, 2004, the parties in all but one of the other derivative Putnam actions in this District filed a stipulation and proposed order, attached hereto as Exhibit D, extending defendants' time to answer or otherwise respond to plaintiffs' complaints until the MDL Panel has ruled on defendants' petition.

**C. There Inevitably Will be Overlapping Discovery Because
The Material Facts Alleged by Plaintiffs in *All* of the
Related Putnam Cases Are Virtually Identical**

Plaintiffs do not, and cannot, deny that they have alleged precisely the same facts that have been pled in support of all claims that are the subject of defendants' petition before the MDL Panel. Thus, there is and can be no doubt that the discovery in all cases will be substantially overlapping, if not identical, in the unlikely event that plaintiffs' facially defective claims survive a motion to dismiss. Under the circumstances, and in the interest of efficient and orderly judicial administration of the more than 60 related Putnam cases, it makes no sense to permit plaintiffs to prosecute their two actions as if no other related litigation were pending.

CONCLUSION

For all of the foregoing reasons, plaintiffs' Opposition should be rejected and the above-captioned actions all should be stayed pending resolution of Putnam's MDL Petition.

Dated: February 12, 2004
Boston, Massachusetts

Respectfully submitted,

James R. Carroll (DSC)

James R. Carroll (BBO #554426)
SKADDEN, ARPS, SLATE
MEAGHER & FLOM LLP
One Beacon Street
Boston, Massachusetts 02108
(617) 573-4800

Of Counsel:
Seth M. Schwartz
Elizabeth A. Hellmann
SKADDEN, ARPS, SLATE
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000

*Counsel for Putnam Investments Trust and
Putnam Investment Management, LLC*

John D. Donovan (Dsc)

John D. Donovan, Jr. (BBO # 130950)
ROPES & GRAY LLP
One International Place
Boston, MA 02110
(617) 951-7000

*Counsel for Putnam Investment Funds and
the Various Named Putnam Mutual Funds*

Stephen W. Greiner (Dsc)

Stephen W. Greiner
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8224

*Counsel for Marsh & McLennan
Companies, Inc.*

CERTIFICATE OF SERVICE

I, James R. Carroll, hereby certify that on February 12, 2004, I caused a true copy of the foregoing document to be served by first class mail, postage prepaid, upon counsel of record for each other party as indicated on the service list attached hereto.

Dated: February 12, 2004

James R. Carroll (Dsc)
James R. Carroll

SERVICE LIST

BY FIRST CLASS MAIL

Mark C. Grady
Nancy Kaboolian
ABBEY GARDY LLP
21 East 39th Street
New York, NY 10016

Jeffrey S. Abraham
ABRAHAM & ASSOCIATES
One Pennsylvania Plaza, Suite 1910
New York, NY 10119

Daniel A. Osborn
BEATIE & OSBORN LLP
521 Fifth Avenue, 34th Floor
New York, NY 10175

Norman Berman
**BERMAN DeVALERIO PEASE
TABACCO BURT & PUCILLO**
One Liberty Square
Boston, MA 02109

Sandy A. Liebhard
U. Seth Ottensoser
Gregory M. Egelston
**BERNSTEIN LIEBHARD &
LIFSHITZ, LLP**
10 East 40th Street
New York, NY 10016

Andrew S. Friedman
Francis J. Balint, Jr.
**BONNETT FAIRBORN FRIEDMAN
& BALINT, P.C.**
2901 No. Central, Suite 1000
Phoenix, AZ 85012

Robert J. Bonsignore
BONSIGNORE & BREWER
23 Forest Street
Medford, MA 02155

Klint Bruno
LAW OFFICES OF KLINT BRUNO
1131 Lake Street
Oak Park, IL 60301

Samuel H. Rudman
Robert M. Rothman
David A. Rosenfeld
Mario Alba, Jr.
**CAULEY GELLER BOWMAN &
RUDMAN, LLP**
200 Broadhollow Road, Suite 406
Melville, NY 11747

Pamela S. Tikellis
Robert J. Kriner, Jr.
CHIMICLES & TIKELLIS, LLP
One Rodney Square, 5th Floor
Wilmington, DE 19801

Nicholas E. Chimicles
Denis Davis Schwartzman
Timothy N. Mathes
CHIMICLES & TIKELLIS, LLP
361 West Lancaster Avenue
Haverford, PA 19041

Martin D. Chitwood
Lauren D. Antonio
CHITWOOD & HARLEY
2300 Promenade II
1230 Peachtree Street, NE
Atlanta, GA 30309

Catherine A. Torell
**COHEN MILSTEIN HAUSFELD &
TOLL, P.L.L.C.**
150 East 52nd Street, 30th Floor
New York, NY 10022

Steven J. Brooks
Robert D. Hillman
**DEUTSCH WILLIAMS BROOKS
DeRENSIS & HOLLAND, PC**
99 Summer Street, 13th Floor
Boston, MA 02110

Michael P. Donovan
DONOVAN & SEARLES, LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103

John G. Emerson
Scott E. Poynter
EMERSON & POYNTER LLP
P.O. Box 164810
Little Rock, AR 72216

Patricia Dallmann
William B. Federman
FEDERMAN & SHERWOOD
120 North Robinson Avenue, Suite
2720
Oklahoma City, OK 73102

Peter Fischbein
**LAW OFFICES OF PETER
FISCHBEIN**
777 Terrace Avenue, 5th Floor
Hasbrouck Heights, NJ 07604

Frederick P. Furth
Henry A. Cirillo
Carolyn B. Burton
Michael S. Christina
THE FURTH FIRM LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104

David Pastor
Peter A. Lagorio
GILMAN & PASTOR, LLP
999 Broadway, Suite 500
Saugus, MA 01906

Michael Goldberg
GLANCY & BINKOW LLP
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067

Jonathan M. Plasse
Christopher J. Keller
**GOODKIND LABATON RUDOFF
& SUCHAROW**
100 Park Avenue, 12th Floor
New York, NY 10017

John J. Roddy
Elizabeth A. Ryan
Gary E. Klein
GRANT & RODDY
44 School Street, Suite 400
Boston, MA 02108

Robert S. Green
Robert A. Jigargian
John W. Pinette
GREEN & JIGARJIAN LLP
235 Pine Street, 15th Floor
San Francisco, CA 94104

Thomas M. Sobol
HAGENS BERMAN LLP
225 Franklin Street, 26th Floor
Boston, MA 02110

Steve W. Berman
HAGENS BERMAN LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Marc S. Henzel
**LAW OFFICES OF MARC S.
HENZEL**
273 Montgomery Avenue, Suite 202
Bala Cynwyd, PA 19004

Harry W. Jacobs
JACOBS LAW OFFICES
500 East 77th Street, Suite 507
New York, NY 10021

David Jaroslawicz
**LAW OFFICES OF
JAROSLAWICZ & JAROS**
150 William Street
New York, NY 10038

Dennis J. Johnson
Jacob B. Perkinson
Peter J. McDougall
JOHNSON & PERKINSON
1690 Williston Road
South Burlington, VT 05403

Frederic S. Fox
Christine M. Fox
Donald R. Hall
**KAPLAN FOX & KILSHEIMER
LLP**
805 Third Avenue, 22nd Floor
New York, NY 10022

Stephen M. Tillerey
KOREIN TILLERY
10 Executive Woods Court
Swansea, IL 62226

George A. Zeles
KOREIN TILLERY
70 West Madison Street, Suite 660
Chicago, IL 60602

Eugene Barsh
KOREIN TILLERY
701 Market Street, Suite 300
St. Louis, MO 63101

Alan L. Kovacs
**LAW OFFICE OF ALAN L.
KOVACS**
2001 Beacon Street, Suite 106
Boston, MA 02135

MALINA & WOLSON
Lincoln Building
60 East 42nd Street
New York, NY 10165

Melvyn I. Weiss
Steven G. Schulman
Peter E. Seidman
Andrei V. Rado
**MILBERG WEISS BERSHAD
HYNES & LERACH, LLP**
One Pennsylvania Plaza
New York, NY 10119

John J. Stoia, Jr.
Timothy G. Blood
Susan Collyer
William J. Doyle, II
**MILBERG WEISS BRSHAD
HYNES & LERACH, LLP**
401 B Street, Suite 1700
San Diego, CA 92101